

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

ALLAN W HOIBY JR

Debtor(s)

NOTICE OF MOTION AND MOTION
FOR DISMISSAL OR CONVERSION

Case No. - BKY 07-44436 RJK
Chapter 13

TO: Debtor(s), Debtor(s) Attorney, all parties in interest under Local Rule 9013-3, and the United States Trustee.

1. Jasmine Z. Keller, (Trustee), moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 10:30 a.m., or as soon thereafter as counsel may be heard, on **February 21, 2008**, in U.S. Bankruptcy Court, Courtroom 8 West, Eighth Floor, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than February 15, 2008, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than February 11, 2008, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). ***Unless a response opposing the motion is timely filed, the court may grant the motion without a hearing.***

4. The Court has jurisdiction of this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. This motion arises under 11 U.S.C. § 1307 and Fed. R. Bankr. P. 1017. This motion is filed under Fed. R. Bankr. P. 9013 and Local Rule 9013-1 *et seq.* The petition commencing this Chapter 13 case was filed on 11/30/07. The case is now pending in this Court.

5. If testimony is necessary as to any facts relevant to this motion, Dawn Kassa, Chapter 13 Trustee's Office, 12 South 6th Street, Suite 310, Minneapolis, Minnesota, will testify on behalf of the Trustee.

6. The Trustee requests that this case be dismissed or converted to a Chapter 7 case, and such other relief as the Court deems just, for the following reason(s):

(X) A. Debtor(s) have failed to appear at §341(a) meeting of creditors and has not been examined.

(X) B. Debtor(s) have failed to make the initial payment proposed by the plan within 30 days after the plan was filed, (11 U.S.C. §1326(a)(1)), and subsequent plan payments that may come due by the date of the hearing on this motion.

() C. The plan term has expired. The amount needed to complete the plan is \$.

() D. The Trustee has received a non-sufficient funds check. **All future payments must be made by money order or cashier's check if this motion is denied or withdrawn.**

() E. Confirmation of the Debtor(s)' plan has been denied.

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Debtors(s) have failed to make payments to Trustee thereby creating current defaults or arrearages on plan payments of \$550.00 as of January 30, 2008, and subsequent plan payments that may come due by the date of the hearing of this motion. The last payment credited to the Debtor(s)' account was on //. Total payments of \$0.00 have been made to date hereof. Required monthly payments are currently \$550.00.

The January, 2008 payment is not included in the listed default amount.

Any payment less than the amount required to bring the plan current will not prevent dismissal of this case. If the default, including the payment due for January, is brought current by the hearing date, the Trustee will strike the motion.

**All payments to cure plan arrears must be made with a cashiers check or money order.
NO PERSONAL CHECKS WILL BE ACCEPTED.**

(O G. Debtor(s) have failed to provide the Trustee with a copy of the federal income tax return or a transcript of same for the most recent tax year within seven days prior to the§341(a) meeting of creditors pursuant to 11 U.S.C. §521(e)(2)(A)(i).

(O H. Debtor(s) have failed to file a certificate of credit counseling and copy of debt repayment plan pursuant to 11 U.S.C. §521(b).

(O I. Debtor(s) have failed to provide to the Trustee the name, address and telephone number of each holder of a domestic support obligation claim. 11 U.S.C. § 521(a)(3).

(O J. Debtor(s) have failed to file payment advices for the 60 days prior to the filing.

(O K. Debtor(s) have failed to pay post-petition amounts payable under a domestic support obligation as they became due. 11 U.S.C. § 1307(c)(11).

(O L. *Debtors have failed to establish that all applicable Federal, State and Local tax returns as required by § 11 U.S.C. 1308 have been filed. § 11 U.S.C. 1307 (e).*

(O M. The debtor has failed to bring to the meeting of creditors under §341 and make available to the Trustee statements for each of the debtor's depository and investment accounts, including checking, savings, and money market accounts, mutual funds and brokerage accounts for the time period that includes the date of the filing of the petition, as required by Interim Bankruptcy Rule 4002(b)(2), and has failed to do so to date.

WHEREFORE the Trustee requests an order granting the relief prayed for herein.

Jasmine Z. Keller, Trustee

Dated: January 30, 2008

/e/ Thomas E. Johnson
Thomas E. Johnson #52000
Margaret H. Culp #180609
Counsel for Chapter 13 Trustee
12 South 6th Street., Ste. 310
Minneapolis, MN 55402
(612) 338-7591

VERIFICATION

I, Dawn Kassa, an employee of the Trustee, declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: January 30, 2008

/e/ Dawn Kassa
Dawn Kassa
Chapter 13 Office

In Re:

ALLAN W HOIBY JR

UNSWORN DECLARATION OF
PROOF OF SERVICE

Case No. - BKY 07-44436 RJK
Chapter 13

Debtor(s)

I, Dawn Kassa, declare that on the date stated below I served a copy of the Notice of Motion and Motion for Dismissal or Conversion and Unsworn Declaration of Proof of Service, upon each of the entities named below by mailing to each of them a copy thereof, by enclosing same in an envelope with first-class mail, postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Copy to Debtor addressed to:

ALLAN W HOIBY JR
9042 TERRACE ROAD NE
BLAINE, MN 55434

Copy to Debtor's Attorney addressed to:

Craig W. Andresen
2001 Killebrew Dr
Suite #330
Bloomington, MN 55425-

Additional Copy(s) addressed to:

RECOVERY MANAGEMENT SYSTEMS CORP
25 SE 2ND AVENUE STE 1120
MIAMI FL 33131-

Saxon Mortgage Services, Inc.
1270 Northland Drive, Suite 200
Mendota Heights MN 55120-

and I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: January 30, 2008

/e/ Dawn Kassa
Dawn Kassa
Chapter 13 Office